

Filed for intro on 02/15/95
Senate Bill _____
By _____

House No. HB1169
By Davidson

AN ACT to provide for electric cooperatives to make their poles and rights-of-way available to communications companies and utilities and on reasonable terms.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The general assembly finds and declares that electric cooperatives have dedicated a portion of poles, ducts, conduits and rights-of-way to communications companies for pole attachments, through a course of conduct over many years, and that it is in the public interest for electric cooperatives to continue to make available such poles, ducts, conduits and rights-of-way for pole attachments at the just and reasonable rates, terms and conditions applied to investor-owned utilities under federal law.

SECTION 2. As used in this section unless the context clearly requires otherwise, the term:

(1) "Communications company" means any telephone company, cable television system, alternative access provider, or interexchange carrier.

(2) "Cooperative" is used as it is defined in Tennessee Code Annotated, Section 65-25-202(4).

(3) "Pole attachment" means any attachment by a communications company to a pole, duct, conduit, or right-of-way owned or controlled by a cooperative.

(4) "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable grade clearance, including the space which separates communications and power lines. The total usable space on a pole occupied by a pole attachment shall be presumed to be thirteen and one-half (13.5) feet; provided that a cooperative or communications company may rebut the presumption with statistically-reliable measurements of total usable space on the utility poles which bear pole attachments in the relevant service area.

SECTION 3. (a) All rates, terms and conditions for pole attachments shall be just and reasonable.

(b) For purposes of (a) of this section, a rate is just and reasonable if it assures a cooperative the recovery of (i) a one time reimbursement for reasonable costs actually incurred by the cooperative for necessary rearrangements and replacements performed at the request of the communications company to provide attachments and (ii) an annual recurring fee for each pole, duct, conduit or right-of-way used by an attachment determined by multiplying (1) the percentage of the total usable space occupied by the pole attachment, by (2) the annual costs of ownership for the entire pole, duct, conduit, or rights-of-way. A pole attachment shall be considered to occupy one foot of space on a utility pole. The space which separates communications and power lines shall otherwise not be considered as occupied by a communications company attachment.

(c) Annual costs of ownership means the sum of (1) the average annual capital costs of all similar poles, ducts, conduits or rights-of-way (exclusive of crossarms and other property and equipment not necessary for pole attachments) owned by the cooperative, and (2) the average annual actual operating costs for such poles, ducts, conduits or rights-of-way.

(d) Operating costs comprise expenses of maintenance, depreciation, administration, and taxes.

(e) Annual capital costs are historical capital costs less depreciation.

(f) The percentage of total usable space on a pole occupied by the pole attachment shall be presumed to be seven and four-tenths percent (7.4%) (i.e. 1 foot occupied by the pole attachment divided by thirteen and one-half (13.5) feet total usable space) provided that a cooperative or communications company may rebut the presumption with statistically-reliable measurements of the total usable space on the public utility's poles which bear pole attachments in the relevant service area.

SECTION 4. The rules, regulations, and decisions of the Federal Communications Commission and federal courts under 47 U.S.C. 224 shall be used as authority in construing this act.

SECTION 5. On request of a communications company or an association of communications companies, a cooperative shall provide, within thirty (30) days, accurate and complete responses to requests for information relevant to the calculation of its pole attachment rates.

SECTION 6. (a) A cooperative shall provide a communications company no less than sixty (60) days' written notice prior to (1) removal of facilities or termination of any service to those facilities, or (2) any proposed increase in pole attachment rates.

(b) A civil action may be brought to enforce the provisions of this act. The court may grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of this act; terminate the unjust, unreasonable rate, term or condition, substitute in the pole attachment agreement the just and reasonable rate, term or condition established by the court; order a refund of overcharges, plus interest; award the costs of any actions, together with reasonable attorney's fees to an aggrieved party who prevails. For any violation of subsection (a) of this section, the court may also order civil penalties in a sum of not

less than one thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000) as the court considers just.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.

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